PUBLIC HEALTH COUNCIL

Meeting of the Public Health Council, Tuesday, February 23, 1999, at 10:00 a.m. , Massachusetts Department of Public Health, Henry I. Bowditch Room, 250 Washington Street, Second Floor, Boston, Massachusetts. Present were: Dr. Howard K. Koh (Chairman), Mr. Albert Sherman, Mr. James Phelps, Mr. Bert Yaffe, Ms. Janet Slemenda, Dr. Clifford Askinazi, (Mr. Sneider, Mr. George, Jr. and Dr. Connolly absent). Also in attendance was Attorney Donna Levin, General Counsel.

Chairman Koh announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance, in accordance with the Mass. General Laws, Chapter 30A, section 11A ½.

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The following members of the staff appeared before Council to discuss and advise on matters pertaining to their particular interests: Mr. Howard Wensley, Director, Division of Community Sanitation; Dr. Greg Connolly, Director, Massachusetts Tobacco Control Program; Dr. Paul Dreyer, Director, Division of Health Care Quality; Ms. Joyce James, Director, Ms. Joan Gorga, Program Anlayst, Ms. Holly Phelps, Consulting Analyst, Determination of Need Program; Attorneys Howard Saxner, Tracy Miller, and Carl Rosenfield, Deputy General Counsels, Office of the General Counsel.

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PERSONNEL ACTIONS:

In a letter dated February 4, 1999, Ms. Katherine Domoto, MD, Associate Executive Director for Medicine, Tewksbury Hospital, recommended approval of an appointment and reappointments of medical practitioners to the provisional consultant and medical staffs of Tewksbury Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendations. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Associate Executive Director for Medicine, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the following appointment and reappointments of medical practitioners to the provisional consultant and medical staffs of Tewksbury Hospital be approved for a period of two years beginning February 1, 1999 to February 1, 2000.

APPOINTMENT:	SPECIALTY:	MASS. LICENSE:

Levitsky, Walter, M.D. (Provisional Consultant Medical Staff)	Neurology	26773

REAPPOINTMENTS:	**SPECIALTY:**	**MASS. LICENSE:**
Griswold, Todd, M.D.	Active/ Psychiatry	71702
Kairys, Howard, Psy.D.	Allied/Psychology	6234
DeFlumeri, Debra, MS, RNC	Allied/Nurse Practitioner	160537
Victoria Knowlton, MS, RNC	Allied/Nurse Practitioner	131213
Stratton, James RNC, NP	Allied /Nurse Practitioner	581732
Ussher, Jean, MS, RNC,GNP/ANP	Allied/Nurse Practitioner	145299

In a letter dated February 9, 1999, Mr. Blake Molleur, Executive Director, Western Massachusetts Hospital, recommended approval of an appointment and a reappointment to the consultant medical staff of Western Massachusetts Hospital, Westfield. Supporting documentation of the appointees' qualifications accompanied the recommendations. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendations of the Executive Director, under the authority of Massachusetts General Laws, Chapter 17, Section 6, the following appointment and reappointment to the consultant medical staff of Western Massachusetts Hospital be approved:

APPOINTMENT:	**RESPONSIBILITY:**	**MED. LIC. NO.**
Loran Willis Roberts, M.D. Consultant	General Medicine/Surgery	80758

REAPPOINTMENT:	**RESPONSIBILITY:**	**MED. LIC. NO.**
Dara P. DeFlorio, DMD Consultant	General Dentistry	17728

In a letter dated February 8, 1999, Mr. Robert Wakefield, Jr., Executive Director, Lemuel Shattuck Hospital, recommended approval of an initial physician appointment to the Senior House Staff of Lemuel Shattuck Hospital. Supporting documentation of the appointee's qualifications accompanied the recommendation. After consideration of the appointee's qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the authority of the Massachusetts General Laws, Chapter 17, Section 6, the following appointment to the Senior House Staff of Lemuel Shattuck Hospital be approved:

INITIAL APPOINTMENT:	**RESPONSIBILITY:**	**MED. LIC. NO.:**
Peter Grubel, M.D. (Sr. House Staff)	Internal Medicine	158060

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PROPOSED REGULATIONS:

INFORMATIONAL BRIEFING ON PROPOSED AMENDMENTS TO 105 CMR 451.000 - MINIMUM HEALTH AND SANITATION STANDARDS AND INSPECTION PROCEDURES FOR CORRECTIONAL FACILITIES:

Mr. Howard Wensley, Director, Division of Community Sanitation, said, "Before you this morning for information are some proposed amendments to environmental or sanitation health standards for correctional facilities. These encompass both the state and the county correctional facilities. The Department of Public Health is mandated by statute to promulgate regulations relative to certain standards within correctional facilities. There is also another statute on the books which says the Department of Public Health shall inspect the correctional facilities and present reports to DOC and the counties and make recommendations for change. The Department of Public Health initially promulgated regulations which consisted of basically two parts. One is mandated standards and the other is a recommended standards. The reason we put the recommended standards in at the time was to have the facilities aware of what we were going to actually look at when we went into the facility which went beyond the couple of mandated items that we had the responsibility to enforce. About a year ago, Department of Corrections asked us if we would make some certain amendments to our regulations which we agreed to do. When we began to look at our regulations, it came to our attention that the statute itself had changed. It is our intention to take a look at our entire set of DOC regulations in the future. However, we are proposing now to move forward on some of those issues that the Department of Corrections has asked us to amend immediately. The substandard provisions that they are moving forward with deal with items such as toilet paper and paper towels in correctional facilities. Previously the Department required that each toilet be supplied with those particular items. Department of Corrections is trying to empower the inmates to be more responsible for their toilet paper and soap and are giving it to each inmate rather than providing it at each toilet and their handwash sink. We are going along with that provided that any toilets or handwash sinks that are used in common with staff have the proper hygiene items attached to it. They have also asked us to change the ratio of handwash sinks and toilets to inmates, which we are going along with consistent with the American Correctional Association ratio. They have also asked us to change what we were currently requiring for hot water temperatures. We had been requiring 110 to 130 degrees Fahrenheit, which is basically what is required in any residence. They asked us to change to 100 degrees to 120 degrees. We have declined to go down to 100 degrees because the State code has a minimum of 100 degrees. They have also suggested that we come up with some changes for the amount of recreational space that is required and to change the language to some degree relative to views for natural light. They comply with the American Correctional Association standards. We are in the process now of scheduling a public hearing and we will come back to Council for promulgation of those particular items and probably in several months we will come back to Council for more comprehensive changes to the DOC regulations."

NO VOTE, INFORMATION ONLY

INFORMATIONAL BRIEFING ON PROPOSED AMENDMENTS TO 105 CMR 430.000: MINIMUM SANITATION AND SAFETY STANDARDS FOR RECREATIONAL CAMPS FOR CHILDREN, STATE SANITARY CODE, CHAPTER IV:

Mr. Howard Wensley , Director, Division of Community Sanitation, said, "The Department of Public Health is mandated by Massachusetts General Law, Chapter 111, Section 127A to promulgate regulations pertaining to Recreational Camps for Children. These regulations were initially promulgated in the early 1960's and were amended several times thereafter. The most recent amendments were promulgated in the spring of 1998. Additional amendments have been proposed, hearings held and a request for promulgation is being presented to the Public Health Council today. Although the Department has oversight authority, the primary responsibility for inspecting and licensing camps is the responsibility of local boards of health. The Department was notified by a concerned board of health that certain camps are interpreting the definition of residential camps, "a recreational camp for children operating on a permanent campsite for four or more consecutive 24-hour period" to mean that if the camp is in operation for fewer than 96 hours, it need not meet the regulations nor be licensed. The Department understands that some camps are now planning to avoid regulation by operating for 94-95 hours. It was the Department's intention, when it drafted the regulations, to include operations where children stayed overnight for four or more nights. To avoid any ambiguity and to capture all operations where children are staying at least four nights, staff propose to amend the definition of a residential camp to a program which operates for four or more overnights. The use of four overnights is to differentiate organized camping from the traditional troop camping practiced by the Boy and Girl Scouts, which does not exceed three nights. A public hearing is scheduled for March 3. It is anticipated that we will return to the Public Health Council at its March meeting for final promulgation."

NO VOTE, INFORMATIONAL ONLY

INFORMATIONAL BRIEFING ON PROPOSED AMENDMENT TO DETERMINATION OF NEED REGULATIONS – 105 CMR 100.000 GOVERNING MANDATORY TERMS AND CONDITIONS:

Ms. Joyce James, Director, Determination of Need Program, said, "The purpose of this memorandum is to inform the Public Health Council that Department staff plans to hold a public hearing on a proposed amendment to Determination of Need Regulations 105 CMR 100.000. This amendment would prohibit increases in the maximum capital expenditure, inflationary or otherwise, of a convalescent, nursing, rest home, clinic or hospital project after the project has been completed and the facility or service licensed. From time to time, the Department has been asked to increase the maximum capital expenditure (MCE) of DoN approved projects, particularly those of nursing facilities, after the projects have been completed and the licensed facility has been in operation for several years. Increases to the MCE are requested to reflect the differences between the

actual costs of construction and financing and DoN approved costs. Staff believes that applicants should be able to identify with substantial certainty the actual cost of the project prior to licensure of the facility. Therefore, Staff is proposing the present regulation which will limit proposed increases in the MCE to the period prior to licensure. Staff anticipates returning to Council as soon as possible with the proposed final regulation for Council's adoption."

NO VOTE/INFORMATIONAL ONLY

INFORMATIONAL BRIEFING ON PROPOSED TOBACCO REGULATIONS AND REQUEST FOR APPROVAL FOR PROMULGATION – 105 CMR 660.000:

Dr. Gregory Connolly, Director, Massachusetts Tobacco Control Program, said in part, "We came before the Council approximately six months ago and proposed regulations calling for cigar warning labels. We did that based on an increase in reported cigar use among youth where data from our youth surveys would show up to 30% of Massachusetts male adolescents used cigars during the past month. The problem has been getting worse in light of the fact that because of settlement issues and pricing issues, cigarettes now sell generally for $3 to $4 a pack and a pack of small cigars is selling for about 90 cents. We are seeing a shift over pricing issues for youth using cigars. What we are calling for is an educational campaign in the schools, pay counter advertising, crack down on youth access, but also most importantly, giving the consumer, particularly the young consumer, information about nicotine yield in cigars. We initially called for testing nicotine and tar in the smoke. At public hearing both industry as well as independent scientists argued that we should probably call for testing only of nicotine in the whole tobacco. Generally our testing would show cigars will have anywhere from 4 to 8 times the amount. So we are going back to public hearing with that testing protocol. We came before the Council a few months ago requesting that we test the constituents in the smoke. As we reported to the Council before, as we have shifted to lighter low yield cigarettes, the type of smoke constituents has changed, that is, even though tar has gone down, data would suggest that the tar is more toxic. We are seeing higher levels of compounds called nitrocemenes…We have met with the tobacco industry and all four major tobacco manufacturers wish to comply with the Department's requirements. So we are pleasantly surprised that we can now talk and not litigate with the four tobacco manufacturers. However, the manufacturers from an economic perspective, do not wish to test the number of brands we are calling for. We are calling for 75 brands representing about 60% of market share. They are calling for about 25 brands they are willing to test…We will develop a multiplier…We are negotiating with the tobacco companies as we speak, and we hope to go to a second public hearing once we finish those negotiations. The federal government is very intrigued with what we are doing. The Federal Trade Commission now has asked Health and Human Services to help them fix their current testing system. They think just testing tar and carbon monoxide is not sufficient and all eyes in this nation and Canada are looking at what we are doing with the tobacco industry relative to smoke constituent testing. So I am pleased to report that we have made progress in that particular area."

Attorney Howard Saxner, Deputy General Counsel said, "We are requesting your approval of some amendments to what are now known as the Tolman Regulations, which the Department passed a number of years ago, which required testing of cigarettes for nicotine yield ratings and also disclosure to the Department of added constituents to cigarettes. The first part, the testing and disclosure to the Department of nicotine ratings has gone smoothly. The second part, the disclosure of added constituents to the Department, has been tied up in the Federal Courts now for two and one half years. We are waiting for a decision but it is overdue and we really don't know when it will happen. In the meantime, however, we have come up with some technical amendments that we are now proposing that have gone to public hearing, which basically regard issues such as the samplings to be done, when the testing is to be done, what happens if in fact the nicotine test results that the regulations reference, which generally are supposed to be sent to the FTC, have not been sent to the FTC, what sort of testing procedures are to be done. And finally, what would happen to added constituents that are reported to the Department where one of the manufacturers claimed some sort of trade secret status and basically we are allowing them to protect the identity of those added constituents until there has been litigation in the courts."

Dr. Connolly added, "…When we first embarked on this it was viewed as a strategy to better disclose to consumers the risks associated with added constituents. The feeling was the added constituents when burned, could increase overall toxicity. In our research, in assessing the documents made available through the Minnesota depository where the State of Minnesota put forth 33 million internal documents, we sent a team out to Minnesota. We acquired documents. We did a very aggressive investigation and found some very disturbing things. Cigarettes over the past 30 years have evolved in their ability to deliver nicotine to the consumer, where they are no longer the conventional tobacco product. They are high tech nicotine delivery devices. Ammonia agents are added that will increase the amount of free nicotine so it gets to the brain faster, possibly making it more addictive, harder to quit, possibly making it easier for youngsters to start…Now maybe when we look at light cigarettes or brands popular with kids, we see a certain profile of added constituents – public health should know that. Maybe we should be restrained from releasing that information for a trade cigarette issue. But there is no reason why a court should deny a public health body the opportunity to investigate. Maybe under different authority we could exercise that authority not to disclose the constituent but to protect the health of the young person if the constituent is being used to cause and maintain nicotine addiction. I think we are on to earth breaking work again here. These regulations if they are adopted and if the court will accept them, will at least let us do the work without disclosing it…Right now we don't know in those brands popular with kids, if it is a different profile of additives are the ones popular with kids, if it is a different profile of additives are the ones popular with the adults, and I think we have the obligation to the kids in Massachusetts and those kids across the country to understand that and these regulations will let us do that."

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve**

the Request for Approval of Adoption of Amended Regulations 105 CMR 660.000 – (Proposed Tobacco Regulations); that a copy be forwarded to the Secretary of the Commonwealth and that a copy of the emergency regulations be attached to and made a part of this record as **Exhibit Number 14,637.**

Chairman Howard Koh noted, "On behalf of the Council, on behalf of the Department as Commissioner, we cannot hear enough about the tobacco issues here in this state. These proposed regulations that have been summarized are yet another attempt to eradicate this addiction from our society. Massachusetts remains the leader in this field. We have dropped adult per capital consumption by some 30% in the last six years. Youth smoking rates in the Commonwealth are flat. They have plateaued while they are going up in the rest of the country. We need to keep the momentum going in this very important area. I applaud the work of Dr. Connolly, Attorney Saxner, everybody in the state who has kept this momentum going. It is very important. My fear as Commissioner is now that the tobacco settlement has been reached, that this is going to be off the front pages of the papers that the general public will not be thinking about these issues as much, and the industry will continue to convince people that it is perfectly normal behavior when we realize that it is indeed the most lethal drug addiction that we face in our society."

REGULATIONS:

REQUEST FOR EMERGENCY PROMULGATION OF AMENDMENTS TO 105 CMR 430.000: MINIMUM SANITATION AND SAFETY STANDARDS FOR RECREATIONAL CAMPS FOR CHILDREN, STATE SANITARY CODE, CHAPTER IV:

Mr. Howard Wensley, Director, Division of Community Sanitation, accompanied by Attorney Tracy Miller, Deputy General Counsel, said in part, "We appeared last Council meeting with some proposed amendments for recreational camps for children, and these amendments were based upon discussions that we had with the camping industry after last year's camping season. We had some major modifications to the camp regulations last year dealing primarily with issues of background checks of staff qualifications. Following the camping season, the camp directors had several concerns relative to the actual operations of the regulations and we developed certain amendments which were heard at a public hearing which was well attended…We had presented qualifications for supervision of specialized activities. In this particular case it included riflery, archery, and horseback riding…We also had some concerns from a few of the camp operators relative to horseback riding regulations. The statute right now requires that horseback rider instructors be licensed by the Department of Food and Agriculture. There were some concerns that our regulations did not make it clear that even if a camp used an outside vendor for these services, that those standards had to be met by the outside vendor. So we amended the regulations to make it clear that a horseback riding instructor for a camp, either hired by a camp or an outside vendor, does have to meet those standards. The immunization requirements that we had in the regulations last year went a little bit beyond what was required by the school immunization standards. Camps informed us that it was very difficult to get pediatricians to comply with regulations that

were different than the school health regulations and in speaking to our immunization people, we are going back into basically requiring the same immunization schedule as is required by the schools…The camps requested that they be allowed to have an LPN as a health supervisor in camps for special needs. For large residential camps previously we had required an RN or an MD and we will allow the LPN to provide the services. One of the major issues in these regulations is the storage and administration of medication. Massachusetts law states that only a licensed healthcare professional can administer medication…What we are proposing here for camps is what we call a "professional oversight model" whereby the healthcare consultant to the camp, with a licensed healthcare person, primarily an MD, nurse practitioner, a PA, is able to train and we are putting the curriculum together for the training…We had to made a technical correction in our emergency equipment that was required. We were originally calling for a two way valve mask and it should have been a one way valve mask. And the other major issue that we had was relative to a requirement that we had in the last set of regulations regarding advertising brochures and materials. The camps brought it to our attention that there was a potential of up to a $10,000 per year cost if it had to go into all their advertising in the newspapers. So what we are proposing is that they would have to have it on all their other promotional literature…The disclosure basically informs the camps that there are regulations that the camp must comply with and the camp must be licensed by the local board of health. The one other document that we sent out for public hearing, although it is not part of the regulations, is a policy on what a camp has to do as far as background checks relative to CORI, which is criminal history background and also sexual background information checks…We have put in language to say that this information has got to be collected where practicable and we have through the policy directive stated where practicable is. We are saying that where practicable means that somebody can be allowed to be unsupervised if they request a CORI information from out of state or out of the country and they get a statement back in writing saying that this information is not available. Or if in fact, they have documented that they have attempted to get this information and they have gotten no response."

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve the Request for Final Promulgation of Amendments to 105 CMR 430.000: Minimum Sanitation and Safety Standards for Recreational Camps for Children, State Sanitary Code, Chapter IV**; that a copy be attached to and made a part of this record as **Exhibit Number 14,638**; and that a copy be forwarded to the Secretary of the Commonwealth for promulgation.

REQUEST FOR EMERGENCY PROMULGATION OF AMENDMENTS TO 105 CMR 170.000 IMPLEMENTATION OF M.G.L.c.111C (GOVERNING AMBULANCE SERVICES AND COORDINATING EMERGENCY MEDICAL CARE) AND REQUEST FOR EMERGENCY PROMULGATION OF AMENDMENTS T0 105 CMR 700.000 IMPLEMENTATION OF M.G.L. c. 94C (CONTROLLED SUBSTANCES ACT) – TO PERMIT BASIC EMTS TO ADMINISTER CERTAIN CONTROLLED SUBSTANCES:

Attorney Tracy Miller, Deputy General Counsel, accompanied by Ms. Louise Goyette, Director of the Office of Emergency Medical Services, said in part, "We are here today to request permission for emergency promulgation of two sets of regulations that work together…These two sets of regulations, one of which is 105 CMR 170.000 and one is 105 CMR 700.000. The 170 series is the implementation of Mass. General Laws, Chapter 111 C, which is essentially the statute implementing EMS in the state. The other set of regulations is 105 CMR 700.000, which is the implementation of Mass. General Laws, Chapter 94C, which are the drug control regulations. We have worked in conjunction with the Division of Food and Drugs in developing this set of proposed emergency regulations. The purpose for these emergency regulations would be to enable emergency medical technicians certified at the basic level and above, it would include intermediates as well, to administer certain controlled substances that are included in Schedule 6, where that administration has been authorized pursuant to statewide emergency medical protocols and where they meet the other requirements that are listed in these regulations…The drug control regulations and the EMS regulations work in tandem: that is why they both have to be amended. Currently, under the two sets of regulations, basic EMTs are authorized if they are trained and working in a program, to administer auto-injected epinephrine. This expands on that into areas where basic EMTs can administer certain medications that are in the national training, and this includes specifically three controlled substances: a hand-held inhaler, nitroglycerin and auto-injected epinephrine. Where this differs from the current regulatory structure is that these controlled substances would not be carried on the vehicle like the current epinephrine is. The EMTs would only be authorized to assist/administer the patient's own prescription. So it is not carrying the medication. It is not determining which medication is appropriate to the patient. It allows the basic EMT to assist, and the definition of assist in the curriculum meets the definition in Massachusetts law of administer and that is why we have to amend these regulations. But it means that they can help the patient take their nitroglycerin, their inhaler or the epinephrine. The basic EMTs would be subject to other restrictions that are listed in the proposed emergency regulations, and that is they need to be trained. They need to be working for an ambulance service or a first responder service while they are doing this administration. And that service needs to be registered with the Department. These regulations are now being proposed as emergency regulations and that is so that we can effect compliance with the national standard of care that is currently in place. Currently, basic EMTs are being trained to the national training standard pursuant to a national curriculum that is published by the United States Department of Transportation and the National Highway Safety Traffic Administration known as NHTSA. This curriculum initially was released in 1994 for basic EMTs. That curriculum trained the EMTs to administer these three controlled substances which I have mentioned. In order for the EMTs to be authorized to do this the changes that we are proposing by emergency regulation need to be implemented to work in tandem with the statewide protocols. Therefore, we are asking for permission to go forward with this regulation on an emergency basis."

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve the Request for Emergency Promulgation of Amendments to 105 CMR 170.000 Implementation of M.G.L. c. 111C (Governing Ambulance Services and**

Coordinating Emergency Medical Care) and Request for Emergency Promulgation of Amendments to 105 CMR 700.000 Implementation of M.G.L. c. 94C (Controlled Substances Act) – To Permit Basic EMTs to Administer Certain Controlled Substances and that a copy of the emergency regulations be forwarded to the Secretary of the Commonwealth; and that a copy of the regulations be attached to and made a part of this record as **Exhibit Number 14,639.**

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DETERMINATION OF NEED:

CATEGORY I APPLICATION:

PROJECT APPLICATION NO. 6-1396 OF BROOKSBY VILLAGE, INC. TO CONSTRUCT A 320-BED LEVEL II NURSING FACILITY AS PART OF A 1,542 RESIDENTIAL UNIT CONTINUING CARE RETIREMENT COMMUNITY TO BE LOCATED AT CAMPUS DRIVE, PEABODY, MA:

Ms. Holly Phelps, Consulting Analyst, Determination of Need Program, said, "Brooksby Village is proposing to construct a 308 Level II bed nursing home with the addition of 12 DoN exempt beds as part of a 1,542 residential unit retirement community in Peabody. There are only 22 retirement communities in the state of Massachusetts and Brooksby Village would be the first and only one in HSA VI. The project meets the requirements of the Department's guidelines of the Type A retirement community whose nursing homes are exempt from bed need guidelines because in their contracts with the residents they promise to provide life care even if the individual runs out of resources. They promise not to rely on any Medicaid reimbursement, and they serve only the residents of the retirement community, so you might think of it as sort of a self contained system that is supported solely with private funds. The nursing home will be built in three phases based on actuarial projections of the needs of the residents of the independent care apartments for nursing home care. The first 80 beds will be built and then a few years later another 80 and then finally the final 160, so the nursing home will not be fully operational until the year 2010. Staff is recommending approval of the project with the conditions."

Mr. Michael Parquette, City of Peabody Community Development Department, on behalf of the Mayor of Peabody, said in part, "I want to express that the City has worked extremely closely with Senior Campus Living on this project and we are 100% behind this project and we back it to the fullest. I believe you all understand the need for this type of project…The need for senior housing is in great demand and we all understand the need is there…I believe the product we get from Senior Campus Living will be a wonderful project for the elderly people in the Northshore area."

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve Project Application No. 6-1396 of Brooksby Village, Inc.** (summary of which is attached to and made a part of this record as **Exhibit Number 14,640**, based on staff findings, with a maximum capital expenditure of $37,020,312 (September 1998 dollars). This approval is subject to the following conditions:

1. The Applicant shall not admit Medicaid patients or seek Medicaid funds for residents of the CCRC. The Applicant, as a "Type A" CCRC long term care facility granted Unique Application status, is precluded from accepting Medicaid patients.

2. The Applicant shall not commence construction of its initial 80 nursing home beds until 200 residential units have been presold, shall not commence construction of the next 80 nursing home beds until 300 additional residential units have been presold and shall not commence construction of the remaining 148 nursing home beds and the 12 DoN exempt beds until 500 additional residential units have been presold.

3. The Applicant shall comply with the residency agreement/contract submitted to the Determination of Need Office on October 27, 1998, which meets the contractual requirement criteria to qualify as a "Type A" CCRC facility.

4. The Applicant shall provide to the Department, by no later than March 31, 1999, or such later date as the Commissioner may in his discretion authorize, satisfactory documentation that the site for the proposed project is properly zoned for the anticipated use of the project.

5. The Applicant shall contribute 19% in equity of the final approved MCE.

6. The Applicant shall, prior to construction, sign a formal affiliation agreement with at least one local acute care hospital and one local home care corporation that addresses provision for respite services.
   The gross square feet (GSF) for this project shall be 183,154 GSF of new construction which the Applicant may construct at its own risk including 176,286 to construct the 308 Level II beds and 6,868 to accommodate the one-time expansion of 12 beds.

7. The Applicant shall obtain Medicare certification of its Level II beds.

8. Brooksby Village, Inc. shall adhere to the terms of 105 CMR 100.552(b) by filing a progress report regarding compliance with the above conditions with the DoN Program once within two years after implementation of this project. The report shall be filed annually thereafter.

ALTERNATE PROCESS FOR TRANSFER OF OWNERSHIP APPLICATIONS: PROJECT APPLICATION NO. 4-3966 OF COLUMBIA METRO WEST HEALTHCARE SYSTEM, LIMITED PARTNERSHIP D/B/A METRO WEST MEDICAL CENTER – REQUEST FOR TRANSFER OF OWNERSHIP AND ORIGINAL LICENSURE OF METRO WEST MEDICAL CENTER, RESULTING FROM THE ACQUISITION BY TENET HEALTH SYSTEM MW, INC. OF THE LIMITED AND GENERAL PARTNERSHIP INTERESTS OF COLUMBIA HOSPITAL CORPORATION OF MASSACHUSETTS, INC. IN COLUMBIA METROWEST HEALTHCARE SYSTEM, LIMITED PARTNERSHIP:

Representative John A. Stefanini, Member of Massachusetts General Court, spoke in regard to Project Number 4-3966 of Columbia Metro West Medical Healthcare System. Representative Stefanini said in part, I wish to submit our comments and thank the Public Health Council and the Department…We appreciate the interest and concern regarding the deal that has been worked out which we believe is a good one for the community in protecting the public health interests of the Metro West community." Comments, expressed by Representative John A. Stefanini, are attached to and made a part of this record as **Exhibit Number 14,641**.

Ms. Joan Gorga, Analyst, Determination of Need Program, said, "The Applicant, Columbia Metro West Healthcare System is before you today seeking approval for a transfer of ownership and original licensure of Metro West Medical Center in Framingham and Natick. The transfer results from the acquisition of the 79.9 limited and general partnership interest of Columbia by Tenet Health System, MW. The purchase price is approximately 75 million dollars. The remaining 20.1% in Columbia is owned by the limited partnership MW Health Partner, Inc. a foundation. The application was reviewed using the alternate process for change of ownership. The standards applied include required residence in the applicant's primary service area for a majority of individuals involved in decision making for the facility. They also include no access problems identified by the Division of Medical Assistance and no violation of fraud provisions. The applicant has agreed to maintain or increase the 2.5% of gross patient service revenue allocated to free care as existed prior to the transfer which Staff is recommending as a condition of approval. Since the audit of the facilities gross patient service revenue is not yet complete the condition includes provision for adjustment up or down depending upon the final percent. The applicant is a licensed facility…The Metro West Community Healthcare Coalition indicated support for the transfer but emphasized that the approval should be conditioned upon additional commitments from Tenet…The agreement includes conditions in eight areas: free care, interpreter services, community benefits, continuity of care, mental health and substance abuse, employee relations, transportation and governance. With two exceptions the conditions in the agreement have been included in the Staff recommendation. The two exceptions are the conditions on interpreter services and progress reports which the applicant and the Coalition sought to have superseded similar conditions on the 1996 Determination of Need. Staff found that the original conditions were still important and valid and that they should remain in place. In conclusion Staff recommends approval of the application Project #4-3966 with conditions."

Mr. Thomas Hennessey, President and Chief Executive Officer, Metro West Medical Center, said, "I am here to represent the 3,000 employees who work at the Medical Centers and their related facilities. It has been a long process for them. I can report that during the last year our patient satisfaction, measured by outside sources, has increased. Our employee turnover has decreased, and the number of doctors at the hospital remains constant. Basically we have lost no medical staff members…The employees are overwhelmingly in favor of the Tenet deal…There's two reasons for that. One is that the capital resources pledged are tremendous. It's a financial commitment which is sorely

needed by the two hospitals which will be greatly used. That will allow us to expand programs rather than decrease programs…The other thing that is extremely important is that I have some experience working with Tenet in the past. Tenet is committed. They are really looking at the local government board and local management for most of the decision making. That is the way to run it at Metro West and I would ask you to support this proposal. "

Dr. Michael Gottlieb, Vice President, Metro West Medical Center, said in part, "The medical staff is strongly in support of this new acquisition by Tenet. We have been through a period of uncertainty and it is time for us to move forward and to meet all the healthcare needs of the people of MetroWest and I think that this is really our best ability to do this. The physicians organization, which represents over 300 physicians practicing in the community, has come out with a statement strongly in support of this acquisition and I have heard of no significant opposition to this."

Ms. Elizabeth Funk, Member of Board of Directors of Metro West, said, " We volunteers in the community on these local boards have spent hours and hours per week over a long period of time, trying to figure out what to do and how to keep fine healthcare services in our community. We are delighted to be representing this transaction…We developed a community process to encourage as many people as possible in our community to let us know what they needed, what they wanted, and what they thought we needed to do for this institution…Tenet was the company of choice in our community…"

Mr. Richard Fiske, Vice President of Acquisition and Development for Tenet Health System, said in part, "We are pleased to be here to speak on behalf of our company as we seek to become the majority partner in the Metro West Medical Center…All of us at Tenet are excited about this new partnership at Metro West Medical Center. We are eager to become corporate citizens in the Framingham and Natick communities. We look forward to working with the physicians, the employees, and local leaders to build on what has already been done to provide quality care to everyone in the community and to expand on the services that the Medical Center offers. Tenet decided to make a concerted effort to become the new operator of those hospitals…We believe that we are the best suited among all the possible contenders to build on the solid record of Metro West and to give it the management and financial resources that it needed to meet the challenges ahead…We believe that all we have learned from working in dozens of communities across the country will be of considerable use at MetroWest and we will continue to keep open lines of communication in the community to make changes as deemed necessary…The fruit of all of our discussions in the community is before you today…Tenet is proud of the plan to become a new partner in Metro West Medical Center. We believe that through a very fair and open process, we were selected by the community as the best possible operator. We were willing to make specific commitments to safeguard and enhance the quality of healthcare to the citizens of the communities and we have agreed to a capital spending budget that will add tangible improvements to the hospitals. The process has produced a remarkable consensus and we urge the Council's approval of the transfer…"

Ms. Demetra Ouellette, Northeast Regional Director for Tenet Health System, said in part, "…It has been my good fortune and opportunity to do a lot of the community outreach…I participated in a total of 100 meetings with a wide variety of community groups throughout the Metro West area. These 100 meetings represented over 10,000 minutes of discussion, dialogue and interactive questioning and answering in the community…We learned that the citizens of Natick and Framingham and the surroundings communities are deeply concerned and even passionate about their medical center. They clearly value it as a community resource and want to see it thrive long into the future. They made it clear to us that the two hospitals are equally important for people to have their say and to honestly express their opinion and be part of the process…Given the strong opinions expressed in our meetings and the important position that Metro West Medical Center commands in the community, it is remarkable how little opposition there has been to our proposal. Tenet and the people of Natick, Framingham, and the surrounding communities have demonstrated their commitment to open and honest dialogue and their willingness to negotiate and resolve differences in a fair and just manner. With your approval, we will make this a partnership, one that is long lasting and a very successful one."

Ms. Nicci Meadow, Chairperson of the Metro West Community Health Coalition, said in part, "…The mission of the Coalition has been to advocate for vulnerable and underserved people as they were affected by the sale of the hospital. The Coalition has more than 25 members ranging from civic groups to religious groups to human service providers. We support the transfer to Tenet today based on negotiations and discussions that we had with Tenet. We testified to many issues at the hearing held by the Determination of Need Staff and we had many issues and we are happy to report that those issues were resolved in a written agreement…We are here to support the transfer…" There are many opportunities for the community to remain involved in the sale of the hospital. The Healthcare Coalition is in full force and will remain involved in helping the hospital be the best that it can be."

Ms. Elizabeth Fancy, Metro West Community Health Coalition, said in part, "…In dealing with the issues in Tenet's purchase of the hospital, the governance provision in the agreement we consider very important. It provides for wider community input through the Coalition with the opportunity to nominate two community people for each of the local boards for the Natick and Framingham Hospital, so there will be ongoing local input from community people. It also mandates an annual meeting with the Selectmen of Natick and Framingham to hold a public forum which will keep a question and answer period…We believe that Tenet will be an asset to the Metro West community and support the license transfer as a result of our negotiations that have come through this governance effort."

Next Ms. Nancy King, Director of Metro West Community Health Coalition spoke. Ms. King said in part, "We have been part of the Coalition since its inception and we helped negotiate some of the provisions in the agreement. We were concerned because transportation is such an issue in the Metro West area. There is virtually no public

transportation. We did not want anyone to be denied because of their lack of transportation. Tenet has agreed to make transportation part of their community needs assessment. They have agreed to participate in the regional planning committee for transportation needs, and we think that they are an important player in this and we are very optimistic that additional transportation services will be provided…" The second provision was that Tenet has agreed on their own to keep the medical/surgical services and the emergency rooms open for the two campuses to the year 2002. We were concerned about what would happen after that…We are committed to making the hospital successful and to have it be a center for quality medical care for the residents of Metro West."

Ms. Laurie Martinelli, Executive Director, Health Law Advocates, said in part, "…We have provided pro bono legal representation to the Metro West Community Health Coalition for over three years…This was our most complicated transaction…The process that you have created, the Department of Public Health, through the Determination of Need and the new process of allowing the public to get involved through this public hearing was absolutely essential to create the kind of consensus that you have before you today. Because as we approached Tenet Health everyone knew the rules. Everyone knew that the Public Health Council has empowered coalitions like Metro West to get involved in the process and created a process that allowed the community to raise issues that the parties had not dealt with. The definition of essential services, what happens in the Year 2002, that is an example of what the community brings to the table. I am going to close with a thankyou to the Public Health Council for your faith in community coalitions and also to compliment your Staff in Determination of Need. They were excellent on this issue, very attuned to the public and we are very proud to say that the community has a partnership with Tenet and how to really make this a successful community hospital."

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve Project Application No. 4-3966 of Columbia Metro West Healthcare System, Limited Partnership d/b/a Metro West Medical Center – Request for transfer of ownership and original licensure of MetroWest Medical Center, resulting from the acquisition by Tenet Health System MW, Inc. of the limited and general partnership interests of Columbia Hospital Corporation of Massachusetts, Inc., in Columbia MetroWest Healthcare System, Limited Partnership.** A summary is attached and made a part of this record as **Exhibit Number 14,642.** This Determination is subject to the following conditions:

1. The Applicant has agreed to maintain or increase the percentage of gross patient service revenue allocated to free care, as defined at M.G.L. c.118G or its successor statute covering uncompensated care, as existed prior to the transfer. The percentage of gross patient service revenue for MWMC allocated to free care shall be 2.5%. This percentage will be adjusted up or down when the audit of the facility's Gross Patient Service Revenue is completed by the Division of Health Care Finance and Policy. This condition supercedes Condition 1 of approved DoN Project No. 4-3916.

2. Free Care: Tenet agrees to continue to provide free care services consistent with the requirements set forth in 105 CMR 100.602(D). Within the first year of the transfer, the Tenet agrees to establish a community process to examine whether additional education and outreach services covered by the Uncompensated Care Pool should be implemented and whether services, currently not covered under the Uncompensated Care Pool, should be covered.

3. Cultural Competence: In addition to committing to actively recruit bilingual and bicultural staff at the
Framingham and Natick Campuses, Tenet is committed to take reasonable efforts to make available trained interpreters in the three major languages spoken in Metro West (i.e., Spanish, Portuguese, and Russian). Within the first year of license transfer, Tenet shall determine through a comprehensive needs assessment (Assessment) what constitutes a sufficient number of trained interpreters. Within 6 months of completion of the Assessment, Tenet shall respond in a reasonable manner to the needs outlined in the Assessment. In addition to the monitoring mechanisms included in approved DoN Project No. 4-3916, Tenet shall monitor the quality of its interpreter services through patient satisfaction surveys.

4. Community Benefits: Tenet pledges not to use foundation funds to meet its community benefit obligations. Furthermore, it acknowledges the importance of providing community benefits to address unmet health needs of the undeserved in the MetroWest service area and agrees to appropriately consider the needs as determined by the community needs assessment and community benefits advisory committee. The Partnership will provide (on the same voluntary basis as other hospitals in the Commonwealth of Massachusetts) to the Attorney General an annual statement of the community benefits and community interactions by Tenet. Such report will be provided as long as all other acute care hospitals in Massachusetts are providing a similar report under the Community Benefits Guidelines.

5. Continuity of Care: Tenet agrees to notify the public at least forty-five (45) days in advance of the proposed closure of Essential Services at either the Framingham or Natick Campus. The Local Boards will establish a process for providing public notice and comment, including the use of local newspaper advertisements and soliciting written comments from the public. For purposes of this Agreement, Essential Services, are defined as: (a) medical/surgical services; (b) obstetrical services; (c) 24-hour physician-covered emergency services; or (d) radiology and laboratory services as necessary to support such emergency services.

6. Mental Health and Substance Abuse: Tenet acknowledges the importance of addressing the mental health and substance abuse needs of Metro West communities. After the Closing, the Assessment will help Tenet better understand how to meet the community healthcare needs, including assessing how the mental health and substance abuse needs are currently being serviced in the MetroWest area. Tenet is committed to seeking input from the community including the community mental health and substance abuse providers and mental health and substance abuse

consumer organizations in order to determine how to best reach the mental health community, and is willing to facilitate the process to best serve the mental health and substance abuse needs of the MetroWest community.

7. Employee Relations: Tenet recognizes the right of employees to organize and select a bargaining agreement in accordance with the law. Tenet will honor the collective bargaining agreements in existence at the time of the license transfer, and will bargain in good faith at the expiration of the contracts.

8. Transportation: Tenet shall provide free and accessible shuttle services between the Framingham campus and the Natick campus as necessary for disabled, elderly and underserved patients in need of hospital services. The Assessment will include, among other things, an evaluation of any unmet transportation needs in the Primary Service Area, as defined in the Partnership's 1998 DoN application.

9. Governance: After implementation, Tenet and MetroWest Health Partner, Inc. will cause the Partnership to establish the following boards: 1) a Framingham Hospital Local Board; and 2) a Natick Hospital Local Board (individually referred to as Local Boards). Each of these Local Boards will consist of 7 to 11 members. In order to be eligible to be a member of either Local Board, an individual must work or reside in the Primary Service Area of the Hospital and possess the kinds of skills and experience which can contribute to the purpose and missions of each Local Board. Additionally, the members who will be chosen for each Local Board will collectively have a diversity of exposure and interests and reflect the broad interests of the community served by each Local Board. In particular, one-half of all members of the Framingham Hospital Local Board must work or reside in Natick. In addition, one-half of the members of each of the Local Boards shall serve on the medical staff of MWMC. The number of elected Local Board members shall be fixed by the Governing Board at its annual meeting, and the elected Local Board members shall be elected by the Governing Board from the community and the following nominated persons. The Coalition shall nominate two (2) names for each of the Local Boards; the Medical Staff of MWMC shall nominate two (2) names for each of the Boards; the Framingham Board of Selectmen shall nominate two (2) names for the Framingham Hospital Local Board; and the Natick Board of Selectmen shall nominate two (2) names for the Natick Hospital Local Board. The remaining Local Board seats shall be nominated by the Governing Board. Existing members of the Natick Advisory Committee are encouraged to apply to become Local Board members. The Chairpersons of each of the Local Boards shall be selected by the Governing Board, and the Chairpersons shall be members of the Governing Board. The principal functions of the respective Local Boards shall be to advise and make recommendations to the Governing Board in the area of free care, interpreter services, cultural competence issues and community benefits issues at the Framingham and Natick campuses and shall advise the Governing Board regarding these issues and other issues pertaining to the unmet community healthcare needs. Tenet has agreed to meet with the Natick and Framingham Board of Selectmen on an annual basis. Tenet agrees to work with the Coalition and the Natick and Framingham Boards of

Selectmen to create an open and public forum at the Selectmen's annual meeting. If unsuccessful, Tenet agrees to hold a public forum, which will overlap or coincide with the annual meeting of the Board of Selectmen.

10. Enforceability: Tenet agrees to appear before the Public Health Council within six months after the closing, and on an annual basis thereafter, and to report on results of the Assessment and compliance with the aforementioned conditions as well as any conditions required to be submitted by the 1996 DON Letter. Furthermore, with the following exceptions, the terms of these conditions set forth in this Agreement shall supercede any similar conditions which may have been the subject matter of any previous progress report or the 1996 DON Letter pertaining to Partnership, and said prior conditions shall have no further force and effect. Specifically, condition 1 above shall be substituted for condition 2(a) of the 1996 DON Letter, and this condition 10 shall not be substituted for the obligation to provide Progress reports as set forth in the 1996 DON Letter.

Staffs recommendation was based on the following findings:

The application satisfies the standards applied under the Alternate Process for Change of Ownership as listed at 105 CMR 100.602 of the Determination of Need Regulations as follows:

A) Individuals residing in the Hospital's primary service area comprise a majority of the individuals responsible for decisions concerning:

1. approval of borrowings in excess of $500,000;
2. additions or conversions which constitute substantial change in services;
3. approval of capital and operating budgets; and
4. approval of the filing of an application for determination of need.

B) The Applicant has consulted with the Division of Medical Assistance (DMA) concerning the access of medical services to Medicaid recipients at its hospital. Comments from the DMA indicate no access problems for Medicaid recipients in the hospital's primary service area.

C) The Division of Health Care Quality has determined that the Applicant and any health care facility affiliates have not been found to have engaged in a pattern of practice in violation of the provisions of M.G.L. c.111, s.51(D).

D) The Applicant has agreed to maintain or increase the percentage of gross patient service revenue allocated to free care, as defined at M.G.L. c.118G or its successor statute covering uncompensated care, as existed prior to the transfer. The percentage of gross patient service revenue, most recently filed but unaudited by the Division of Health Care Finance and Policy, allocated to free care in FY 1998 at Metro West Medical Center (MWMC) was 2.5%.

E) The Division of Health Care Quality has confirmed that the Applicant is a licensed facility.

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PROJECT APPLICATION NO. 4-4870 OF BOSTON, IVF, INC. – REQUEST FOR TRANSFER OF OWNERSHIP AND ORIGINAL LICENSURE OF SURGERY CENTER OF WALTHAM, L.P., RESULTING FROM THE ACQUISITON OF SUBSTANTIALLY ALL OF ITS ASSETS BY BOSTON IVF, INC.:

Ms. Holly Phelps, Determination of Need Program Consulting Analyst, said, "Boston I.V.F., Inc. is proposing a transfer of ownership and original licensure of the Surgery Center of Waltham. The Surgery Center is a multi-specialty surgery center that includes gynecological services. The new licensee will be Boston I.V.F. and they will include in the services of the center their own assisted reproductive services that they now operate."

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve Project Application No. 4-4870 of Boston, IVF., Inc. – Request for Transfer of Ownership and Original Licensure of Surgery Center of Waltham, L.P.,** resulting from the acquisition of substantially all of its assets by Boston IVF, Inc.. A summary is attached and made a part of this record as **Exhibit No. 14,643**.

Staff's recommendation was based on the following findings:

The application satisfies the standards applied under 100.602 as follows:

A) Individuals residing in the Hospital's health systems area or primary service area comprise a majority of the individuals responsible for decisions concerning:

1. approval of borrowings in excess of $500,000;
2. additions or conversions which constitute substantial change in services;
3. approval of capital and operating budgets; and
4. approval of the filing of an application for determination of need.

B) The Division of Medical Assistance (DMA) did not submit any comments on this application.

C) The Department has determined that the Applicant, a freestanding ambulatory surgery center, is not subject to a condition of approval to maintain or increase the percentage of gross patient service revenue allocated to free care as defined at M.G.L.c. 118G or its successor statute covering uncompensated care, as existed prior to the transfer of ownership.

D) The Division of Health Care Quality has confirmed that the Center is a licensed facility.

No comments were submitted on the application.

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COMPLIANCE MEMORANDUM:

PREVIOUSLY APPROVED DON PROJECT NO. 2-3144 OF HILLTOP SERVICES, INC., D/B/A THE HIGHLANDS; A LONG TERM CARE CENTER – REQUEST TO INCREASE THE MAXIMUM CAPITAL EXPENDITURE AND MODIFY A CONDITION OF APPROVAL:

Staff explained, "The purpose of this memorandum is to present for Public Health Council's action the request by Hilltop Services, Inc. d/b/a The Highlands: A Long Term Care Center (the "holder") to increase the maximum capital expenditure (MCE) of Project No. 2-3144 from $6,472,479 (July 1986 dollars) to $7,749,649 (February 1997 dollars), allocate 2,360 gross square footage to the adult day care program, and decrease the equity condition from 23% to 10%. Council action is required because the holder is asking to increase the MCE and modify a condition of approval. The holder is requesting $1,292,244 (February 1987 dollars) above inflation of the previously approved MCE. The increase includes $475,563 in construction costs (land development and construction contract), $120,781 in financing costs and $695,900 in other costs (asbestos removal, demolition, and project abandonment). Staff has disallowed the additional construction costs since the land development costs should have been anticipated when the two amendments, cited previously, were filed by the holder to increase the MCE. Staff has allowed adjustments to the construction contract to include the hillside construction of the five-story addition. This additional cost of construction, recognized by Marshall and Swift, was not provided in the initially approved project. Staff however has disallowed the additional costs in construction contract resulting from the holder's averaging of the local multipliers of Worcester and Springfield to calculate the cost/GSF and inclusion of the renovation costs of the 2,360 GSF for the adult day care program. Staff finds no basis for averaging the local multipliers of both cities since the facility is located in Fitchburg and using the local Worcester multiplier is consistent with Marshall and Swift. Staff notes that it is the Department's policy to approve only the GSF and not the construction costs associated with adult day care programs, which are under the jurisdiction of the Division of Medical Assistance. Staff has also disallowed the increase in financing costs to reflect the disallowed construction costs."

After consideration, upon motion made and duly seconded, it was voted unanimously to **approve amendments to Previously Approved DoN Project No. 2-3144 of Hilltop Services, Inc., d/b/a The Highlands; A Long Term Care Center's Request to Increase the Maximum Capital Expenditure and Modify a Condition of Approval**. The approval provides for an increase in the maximum capital expenditure (MCE) to $7,152,125 (February 1987 dollars), allocation of 2,360 gross square feet, or 3% of the

project's total gross square feet, to the adult day care program and modification of a condition of approval to decrease the equity contribution to 10%.

This amendment is subject to the following conditions:

1. The holder shall contribute 10% equity contribution to the final approved maximum capital expenditure.

2. The holder shall accept $7,152,125 (February 1987 dollars) as the final maximum capital expenditure associated with this project. No further increases, inflationary or otherwise, shall be approved.

All other conditions attached to the original and amended approval of this project shall remain in effect.

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PREVIOUSLY APPROVED DON PROJECT NO. 5-1010 OF FREEDOM CREST NURSING HOME – REQUEST TO INCREASE THE MAXIMUM CAPITAL EXPENDITURE AND MODIFY A CONDITION OF APPROVAL:

After consideration, upon motion made and duly seconded, it was voted unanimously, to **approve with the conditions the amendment to Previously Approved DoN No. 5-1010 of Freedom Crest Nursing Home for Request to Increase the Maximum Capital Expenditure and Modify a Condition of Approval** based on staff findings. The approval provides for modification of a condition of approval to increase the maximum capital expenditure (MCE) to $5,622,590 (July 1988 dollars). Staff finds that despite increases in construction and financing costs, the holder was able to build the facility at a cost below inflation. Based on documentation submitted by the holder, these cost increases were due to delay in construction resulting from project abandonment by Condyne, Engineering and Construction, Inc., the contractor hired to build the facility. While working on the project, Condyne filed for bankruptcy under Chapter 7 on November 28, 1989. There were no accessible costs incurred by the holder to complete the project. The project was financed by Vanguard Bank, which prior to closure sold the loan to Shawmut Bank, which was later acquired by Fleet Bank, which did not require a bonding contract by the contractor. The holder states that due to the bankruptcy and the lack of bonding, it had no recourse to recover the additional costs other than the request for an increase in the MCE. Staff has determined that the requested increase in additional costs were reasonable in light of past decisions, was not foreseeable at the time the application was filed. Staff has determined that the cost increases were beyond the holder's control. "

This amendment is subject to the following conditions:

1) The holder shall accept $5,622,590 (July 1988 dollars) as the final maximum capital expenditure associated with this project. No further increases, inflationary or otherwise, shall be approved.

2) All other condition attached to the original and amended approval of this project shall remain in effect.

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The meeting adjourned at 11:50 a.m.

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Howard K. Koh, M.D.
Chairman
Public Health Council

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